CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(23)

O.A.No. 623 of 1993

DATE OF DECISION 7th Sept. 1999.

Shri B.S. Rajesh (PETITIONER(S)

Mr P.P. Khurana ADVOCATE FOR THE PETITIONER(S)

-VERSUS-

Union of India and another RESPONDENT(S)

Mr H.K. Gangwani ADVOCATE FOR THE RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR N. SAHU, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ? yes.
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Original Application No.623 of 1993

Date of decision: This the 7th day of Sept. 1999.

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr N. Sahu, Administrative Member

Shri B.S. Rajesh,
S/o Shri Lala Ram
R/o E-51 Gali No.3,
East Vinod Nagar,
Delhi-91 .....Applicant

By Advocate Mr P.P. Khurana.

- versus -

1. The Union of India, through the
   Secretary, Ministry of Defence,
   South Block,
   Central Secretariat,
   New Delhi.
2. The Commodore IN, Director of
   Civilian Personnel,
   Naval Headquarters,
   Sena Bhawan,
   New Delhi. .....Respondents

By Advocate Mr H.K. Gangwani.

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O R D E R

BARUAH.J. (V.C.)

The applicant in this O.A. has challenged the Annexure A-5 order dated 18.8.1992 dismissing the applicant from service with immediate effect and prayed that the said order be quashed and set aside. The applicant further seeks direction to the respondents to reinstate him in service giving him all the consequential benefits.

2. Short facts are:

The applicant joined service as Tracer under the Government of India, Ministry of Defence in the month of November 1975. He was thereafter promoted to Draftsman in the year 1983 and further promoted to Senior Draftsman in the year 1986. Since then he had been discharging his duties as such till he was dismissed from service by Annexure A-5 order.

3. On the basis of a criminal case, the applicant was placed under suspension by Annexure A-1 order dated 25.10.1990. He submitted a representation on 9.6.1992 praying for revocation of the order of suspension. There was no reply to the said representation. The applicant, thereafter, submitted Annexure A-3 representation dated 20.7.1992 stating his grievance and prayed for revocation of the suspension order.

4. On the basis of a First Information Report (FIR for short), lodged in connection with certain espionage matter, a criminal case was instituted. However, the name of the applicant did not appear in the said FIR. Certain persons were arrested. The applicant was, however, not arrested in connection with the said case. No challan was also issued by any Court. In the said criminal case, some persons were chargesheeted and they were facing trial in the Court of the Additional Sessions Judge, New Delhi. The applicant was expecting a reply to his representation with a hope that his suspension order would be revoked and he would be reinstated. The applicant was, however, served with Annexure A-5 order dated 18.8.1992, dismissing him from service. The Annexure A-5 order dated 18.8.1992 also indicates that he would not be entitled to any pensionary

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benefits. Even after availing of all the remedies available to him, as nothing was done in his favour, he approached this Tribunal by filing the present application.

5. The first respondent Nos.1 and 2 have filed counter disputing the averments made in the O.A. In the O.A. the applicant contends that he was dismissed from service without there being any ground whatsoever. Before passing the impugned order there was no satisfaction of the President as contemplated under the law. The satisfaction referred to in the impugned order was only a purported satisfaction without there being any material in this connection. Regular enquiry was dispensed with on the ground that it would not be expedient to hold enquiry in the interest of the security of the State. The applicant states that there was no material whatsoever for satisfaction of the President to come to that conclusion. He further contends that none of the conditions for invoking the provisions of Rule 19(iii) of the CCS (CCA) Rules, 1965 was available before taking the decision for dispensing with the enquiry.

6. The rspondents in their counter have stated that there was no cause of action for the applicant to approach this Tribunal. The applicant was engaged in espionage activities. He passed information/documents for spying activities of the Pakistan High Commission Office. The further contention of the respondents is that the order of dismissal passed by the President in exercise of the powers under Article 310 of the Constitution read with Rule 19(iii) of the CCS (CCA) Rules, 1965 are unquestionable.

7. Rejoinder has also been filed by the applicant. In the rejoinder he contends that there was no material whatsoever before the Disciplinary Authority for exercising

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of power of summary dismissal. The respondents further contend that the applicant made confessional statements which are valid and legal.

8. We heard both sides. Mr P.P. Khurana, learned counsel for the applicant, submitted before us that the impugned order could not be sustained in exercise of the power under Article 310 of the Constitution. According to him Article 310 deals with the doctrine of pleasure. The President may only in an appropriate case withhold the pleasure if the materials available before the President so justifies. The dismissal was not contemplated under the said Article. The dismissal, removal or reduction of rank are some of the major penalties contemplated under Article 311 of the Constitution. The impugned order was passed de hors the provisions under Article 311 of the Constitution. Therefore, the order of dismissal under the provisions of Article 310 was bad in law and cannot sustain. His second submission was that the provisions of CCS (CCA) Rules was not applicable to the civilians in the Defence Department like that of the applicant in view of the various judicial pronouncements. His third submission is that there was no material before the President for his satisfaction that in the security of the State it was not practicable to hold an enquiry. The alleged confessional statements extracted from the applicant were before the Police Officer and such confessions had no force. Lastly, Mr Khurana submitted that the impugned order was not in accordance with the provisions of the Constitution and the Rules made thereunder.

9. Mr H.K. Gangwani, learned counsel for the respondents, disputed the submissions of Mr Khurana. According ot him the applicant was engaged in espionage

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activities as referred to the O.M. dated 27.7.1980 and as amended by O.M. dated 1.8.1986 issued by the Ministry of Home Affairs. The applicant's case was referred to the DOP&T for placing before the Committee of Advisers comprising of the Secretary, Ministry of Home, Secretary, Ministry of Law and Justice, Secretary, Ministry of Personnel and Training, Director, IB and Secretary, Administrative Ministry for their consideration. The committee after due consideration recommended that the applicant might be dismissed from service. This was thereafter placed before the Defence Minister and the Defence Minister approved the the recommendations. Ultimately, it was placed before the Prime Minister who approved the order of dismissal of the employees including the applicant for espionage activities. Thereafter the impugned order was passed by the President in exercise of power under Article 310(1) of the Constitution. The order of dismissal was authenticated by the Under Secretary (Defence) on behalf of the President. The impugned order passed on behalf of the President was in accordance with the Transaction of Business Rules, 1961. There was no infirmity in this. Mr Gangwani further submitted that a Bench of this Tribunal had already dealt with the case of other employees in connection with the aforesaid case in O.A.No.3223/92, Shri N. Srinivasan and O.A.No.3278/92, Shri D.D. Ojha. The Tribunal did not interfere in those cases. As the applicant was a civilian employee in the Defence Ministry and he was paid from the Defence Estimates and not from the Civil Estimates the provisions of Article 311 would not be applicable. Hence the impugned order was passed in exercise of the powers under Article 310(1) of the Constitution. Mr Gangwani disputed the submissions of Mr Khurana that the provisions of CCS (CCA) Rules would not apply to the applicant's case.

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The learned counsel further submitted that all the civilian posts under the Government were held at the pleasure of the President. There was, however, certain restrictions.

10. On the rival contention the learned counsel for the parties, the following questions fall for determination:

I) Whether in the present facts and circumstances of the case the impugned order dismissing the applicant from service could be passed invoking the provisions of Article 310 of the Constitution.

II) Whether the provisions of CCS (CCA) Rules was applicable to the civilians in the Defence Department like that of the applicant.

III) Whether the impugned order was issued in accordance with the provisions of the Constitution and the rules made thereunder.

IV) Whether there are materials for satisfaction of the Authority to arrive at the conclusion that in the interest of the security of the State it was not practicable to hold any enquiry.

11. POINT NO.I:

The pleasure doctrine has been incorporated under Article 310 (1). Unlike in the U.K., in India the pleasure doctrine is not subject to any law made by the Parliament, but is subject to what is expressly provided by the Constitution. This doctrine relates to the tenure of a Government servant. During the British Rule, under Section 96(B) of the Government of India Act, 1919, civil servants used to hold office during the pleasure of the Crown. The said Section 96 in addition to dealing with the tenure of civil servants also dealt with a matter relating to their recruitment, conditions of service, pay and allowances and

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pension. The note to Section 240 of the Government of India Act, 1935, however, refers to "Tenure of office of persons employed in civil capacities in India". A marginal note of Article 310 of the Constitution also refers to tenure and states, "the tenure of officers serving in the Union and State". Accordingly the tenure of the Government servant under Article 310(1) is subject to the pleasure of the President or the Governor of the State except as expressly provided by the Constitution. Therefore, the pleasure doctrine as enunciated under Article 310(1) is not unfettered. It is restricted to what is expressly provide by the Constitution. It was argued that this doctrine was a relic of the feudal age and a part of the special prerogative of the Crown, which was imposed upon India by an imperial power and thus is an anachronism in this democratic, socialist age, and therefore, it must be confined within the narrowest limits. However, this argument was countered by saying that this doctrine was a matter of public policy and it was in public interest and for public good that the right to dismiss at pleasure a government servant who had made himself unfit to continue in office. However, certain safeguards should exist and be exercisable in the constitutional sense by the Crown in England and by the President or the Governor of a State in India. The arguments for abandoning this doctrine were found to be unacceptable.

The position in India that the pleasure doctrine was passed on public policy had been accepted by the Apex Court in State of U.P. -vs- Babu Ram Upadhya, (1961) 2 SCR 679, 696, and Moti Ram Deka -vs- General Manager, N.F. Railway, (1964) 5 SCR 683, 734-5. In a welfare State like that of

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ours, the policies and statutes are intended to bring about socio-economic reforms and the uplift of the poor and disadvantaged classes. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is vitally interested in the efficiency and integrity of such services. So unwanted, inefficient, corrupt civil servants becomes a burden to the State and in such cases the pleasure doctrine has to be applied. But, then for a government servant to discharge his duties faithfully he must have feeling of security of tenure. Therefore, under our Constitution, this provided by the Acts and Rules made under Article 309 and also by safeguards in respect of punishment, removal and reduction of rank as provided in Clauses (1) and (2) of Article 311. It is, however, as much in public interest and for public good government servants who are inefficient, dishonest and corrupt and become a security risk should not be allowed to continue in service and that the protection afforded to them by Acts and Rules made under Article 309 and by Article 311 may not be abused by them to the detriment of public interest and public good.

From reading of Article 309, 310(1) and 311(1) it is abundantly clear that the pleasure doctrine as contemplated under Article 310 can be exercised with restrictions that are imposed under Article 311 (1) & (2) of the Constitution. Article 310 begins with the expression, "except as expressly provided by this Constitution."

The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is

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provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown, but because public policy requires, public interest needs and public good demands that there should be such a doctrine (See Union of India and another -vs- Tulsiram Patel, (1985) 3 SCC 398). Article 310 (1) begins with the expression "except as expressly provided by the Constitution", meaning the pleasure doctrine is envisaged under Article 310 subject to any provision provided in the Constitution. Clauses (1) and (2) of Article 311 put restrictions in invoking the pleasure doctrine of the President or the Governor as the case may be. The provisions contained in Article 311 (1) and (2) are express provisions as with respect to termination of service by dismissal or removal as also with respect to reduction in rank of a civil servant and thus come within the ambit of the expression "Except as expressly provided by the Constitution" qualifying Article 310(1). Article 311 is thus an exception to Article 310 and was described in Parshotam Lal Dhingra -vs- Union of India, AIR 1958 SC 36, as operating as a proviso to Article 310 (1) though set out in a separate article. Article 309 is, however, not such an exception as it does not lay down any express provision which would derogate from the amplitude of the exercise of pleasure under Article 310 (1). Article 309 only confers power to the Legislature or the Executive to make laws and frame rules but the said power is made subject to the provisions of the Constitution. Thus, Article 309 is subjec to Article

310 (1) and any provision restricting the exercise of the pleasure of the President or Governor in an Act or rule made or framed under Article 309 not being an express provision of the Constitution, cannot fall within the expression "Except as expressly provided by this Constitution".

Reading of these Articles will abundantly make clear that the President or Governor may exercise the pleasure doctrine subject to the restrictions imposed in the Constitution. In the absence of any restrictions the pleasure doctrine of the President or the Governor becomes unfettered.

In Union of India and Another -vs- K.S. Subramanian, 1989 Supp (1) SCC 331, the Supreme Court observed as follows:

> ".....Article 311(2) thus imposes a fetter on the power of the President or the Governor to determine the tenure of a civil servant by the exercise of pleasure. Tulsiram case was concerned with the exclusion of Article 311(2) by reason of second proviso thereunder. We are also concerned with the exclusion of Article 311(2), if not by second proviso but by the nature of post held by the respondent....."

In the said case, the Supreme Court further observed that the employee occupied the post drawing his salary from the Defence Estimates, and therefore, would not be entitled to get protection under Article 311 (2). The exclusionary effect of Article 311 (2) deprived him the protection which he is otherwise entitled to. The Supreme Court in the said case further observed that in such cases there would be no fetter in the exercise of the pleasure of the President or the Governor. So, the restrictions imposed under Article 311 (2) any employee not entitled to get the protection under Article 311 (2) will be exposed to the pleasure of the President or Governor without any fetter and in such

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cases the President can use the pleasure doctrine without any restriction.

In the instant case, it is admitted fact that the employee was a civilian employee drawing his salary from the Defence Estimates. Therefore, Article 311 was of no application. In that event the President can pass order terminating the service without any fetter. Therefore, we find sufficient force on the submission of the learned counsel for the respondents that the President could pass the Annexure A-5 order dated 18.8.1992 invoking the power under Article 310 (1). Even if the CCS (CCA) Rules are not applicable, as submitted by the learned counsel for the applicant, it would not effect the President's power under Article 311.

In view of the above we answer Point No.I in the affirmative and in favour of the respondents.

12. POINT NO.II

This point does not require much time to come to the conclusion. In view of the decision in K.S. Subramanian's case (Supra), Article 311 is not applicable. In para 5 of the said judgment, the Supreme Court observed that a civilian employee in Defence Service who is paid salary out of the estimates of the Ministry of Defence does not enjoy the protection of Article 311(2). Again, in L.R. Khurana -vs- Union of India, (1971) 1 SCC 780, the Supreme Court observed as follows:

> "The question whether the case of the appelant was governed by Article 311 of the Constitution stands concluded by two decisions of this Court. In Jagatrai Mahinchand Ajwani v. Union of India it was held that an Engineer in the Military Service who was drawing his salary from the Defence Estimates could not claim the

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> protection of Article 311(2) of the Constitution. In that case also the appellant was found to have held a post connected with Defence as in the present case. This decision was followed in S.P. Behl v. Union of India. Both these decisions fully cover the case of the appellant so far as the appliability of Article 311 is concerned."

In K.S. Subramanian's case, the High Court proceeded with the matter as if the CCS (CCA) Rules, 1965 were applicable. However, in para 11 of the judgment, the Apex Court observed as follows:

> ".....The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Article 311(2). When Article 311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion."

In view of the decisions quoted above, the CCS (CCA) Rules, 1965 would not be applicable in the present case. If that is so, the non-application of the CCS(CCA) Rules will not curtail the power of Article 310 (1).

Accordingly, this point is answered in favour of the respondents.

13. POINT NO.III

The learned counsel for the applicant submitted before us that the impugned order was not passed in compliance with the Transaction of Business Rules, 1961. The President's signature was not obtained in the present case. In reply, Mr Gangwani placed before us the details of the procedure adopted before passing of the impugned order. The order was passed in the name of the President and was authenticated by the Under Secretary, Ministry of Defence.

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We do not find any infirmity in the procedure adopted. The President or Governor acts on the aid and advice of the council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the council of Ministers. On looking to the papers and on hearing the learned counsel for the parties we do not find any infirmity in the order. Assuming there are some irregularities in compliance with the rules it would not make the impugned order invalid in view of the fact that the rules made under Article 77 are only directory in nature.

Accordingly this point is answered in the affirmative and in favour of the respondents.

14. POINT NO.IV

The learned counsel for the applicant very strenuously argued before us that there was no material for passing the impugned order by adopting a summary procedure. The materials were placed before us. Mr Gangwani had also placed before us certain records. We do not feel that the impugned order was passed without any material. Besides, if Article 310 is unfettered as observed earlier the President may come to the conclusion on the materials before it. Considering the entire facts and circumstances of the case we do not agree with the learned counsel for the applicant that the impugned order was passed without any material.

Therefore, this point is also answered in the affirmative and in favour of the respondents.

15. In view of our discussions made hereinbefore, we find no merit in the application. Besides, Mr Gangwani submitted before us that in two other original applications this Tribunal refused to interfere with the order of dismissal passed by the authority. We do not find any ground to disagree with the earlier decisions of the Tribunal.

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16. Accordingly the application is dismissed. No order as to costs.

(N. SAHU)
ADMINISTRATIVE MEMBER

(D. N. BARUAH)
VICE-CHAIRMAN

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